

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

Crl.MC.No. 1065 of 2004(C)

CC.58/2003 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI
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PETITIONER: ACCUSED

M.I.BABY, S/O.ISSAC, MANNAMPUZHA HOUSE,
ATHANI P.O., THRISSUR DISTRICT,
(FORMERLY SUB INSPECTOR OF AREEKODE POLICE STATION

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: COMPLAINANT/STATE

1. ABDULLAKUTTY K.K.,
S/O.AHAMMEDKUTTY, ADVOCATE, MANJERI.
2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY ADV. SRI.K.M.SATHYANATHA MENON
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 16/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.1065 of 2004

Dated this the 16th day of January 2007

O R D E R

The petitioner is the accused in a prosecution under Section 500 I.P.C. He is a police official. The complainant/respondent herein, is an advocate of the local Bar at Manjeri. The allegation against the petitioner is that defamatory abuses were showered on him by the petitioner against the complainant, a law practitioner. Such defamatory imputations made by the petitioner had brought the complainant down in the assessment of the right thinking members of the community, it was alleged. Cognizance was taken by the learned Magistrate. The petitioner has been summoned to appear before the learned Chief Judicial Magistrate, Manjeri.

2. The petitioner has now come to this court with the prayer that the powers under Section 482 Cr.P.C may be invoked to quash the proceedings initiated against the petitioner under Section 500 I.P.C. The crux of the contention is that the requisite sanction under Section 197 Cr.P.C has not been obtained.

3. The petitioner points out that even according to the complainant, he was engaged in the discharge of his official

duties. He was on routine inspection of the vehicles which were passing by. It was in the course of such official conduct of the petitioner that he had allegedly stopped the vehicle of the complainant and had later proceeded to allegedly make the defamatory abuses against the complainant. The learned counsel for the petitioner submits that, at any rate, the conduct of which the petitioner is alleged to be guilty, must be held to have been committed by him "while acting or purporting to act in the discharge of his official duty". Therefore, sanction under Section 197 Cr.P.C is essential, it is contended.

4. The learned counsel for the respondent, on the contrary, contends that, by no stretch of imagination can the deliberate indecent abuses showered on the complainant be reckoned as having been committed by the petitioner "while acting or purporting to act in the discharge of his official duty". The alleged conduct had nothing to do with the discharge of official duty. Opportunity became available to the petitioner to indulge in the culpable conduct and it cannot be held that the culpable conduct indulged in by the petitioner was traceable to his official duty either actually or in the purported discharge of such duty.

5. I shall carefully avoid any authentic expression of opinion on the factual dispute raised. Suffice it to say that on an anxious consideration of all the relevant inputs, it cannot, at this stage, be readily concluded that the alleged conduct was indulged in by the petitioner "while acting or purporting to act in the discharge of his official duty". Precedents have been cited before me. It is well settled that too wide a construction for the crucial expressions "while acting or purporting to act in the discharge of his official duty" would render a citizen without any effective remedy against high handed culpable act on the part of the officials and that too narrow a construction would in turn make the protection under Section 197 of the Cr.P.C unreal and illusory for a public official discharging his duties honestly. Facts of each case become relevant and crucial and it is in this context that I take the view that the alleged conduct indulged in by the petitioner cannot, by any stretch of imagination, be held to be completely covered by the protection under Section 197 Cr.P.C. This Criminal Miscellaneous Case must, in these circumstances, fail. However, I take note of the submission of the learned counsel for the petitioner that insistence on personal appearance of the petitioner may not be made. It is, of course,

for the petitioner to apply before the learned Magistrate for exemption from personal appearance and I do not find any reason in the facts and circumstances of this case for the learned Magistrate not to consider the said request on merits, in accordance with law, and expeditiously. The petitioner has already entered appearance before the learned Magistrate, it is submitted. He can certainly apply for exemption from personal appearance.

6. The learned counsel for the petitioner further submits that the dispute is between the lawyer on the one hand and the police official on the other. The petitioner is not likely to get proper legal assistance if the case were continued at the courts at Manjeri where the respondent a lawyer is practicing. In these circumstances, it is prayed that directions may be issued in the interests of justice to ensure that the trial is conducted before a court where the respondent/complainant does not practice usually. The learned counsel for the respondent opposes the said prayer and submits that it is not necessary to invoke the powers of transfer in this application filed under Section 482 Cr.P.C.

7. Having considered all the relevant inputs, I am

satisfied that while dismissing the application under Section 482 Cr.P.C to quash the proceedings, the interests of justice will be secured ideally by directing transfer of the case, as prayed for, considering the peculiar facts and circumstances of this case.

8. In the result, this Criminal Miscellaneous Case to quash the proceedings is dismissed. But the following directions are issued.

(i) C.C.No.58/2003 pending before the learned Chief Judicial Magistrate, Manjeri shall stand transferred to the learned Chief Judicial Magistrate, Kozhikode. The learned Chief Judicial Magistrate, Manjeri shall forthwith transmit the records to learned Chief Judicial Magistrate, Kozhikode and the parties shall appear before the learned Chief Judicial Magistrate, Kozhikode on 19/02/2007.

(ii) It shall be open to the petitioner to apply for exemption from personal appearance and the learned Chief Judicial Magistrate shall pass appropriate orders on such application, in accordance with law.

Communicate the order to both the courts forthwith.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006